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9 Attorneys for Defendants,
10 OFFICEMAX INCORPORATED, a Delaware
11 corporation and OFFICEMAX NORTH AMERICA,
12 INC., an Ohio corporation

13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA

15 WILLIAM MINTER, JR., individually
16 and on behalf of all those similarly
17 situated,

18 Plaintiff,

19 v.

20 OFFICEMAX, INC., a Delaware
21 corporation; OFFICEMAX, INC. fka
22 BOISE CASCADE CORPORATION, a
23 Delaware corporation; BOISE OFFICE
24 SOLUTIONS, corporate form unknown;
25 and, DOES 1 through 500, inclusive,

26 Defendants.

Case No. C07-02399 BZ

EXHIBIT A TO NOTICE OF PENDENCY

[Local Rule 3-13]

FILED

2007 APR 24 PM 3:50

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9 Attorneys for Defendant
10 OFFICEMAX NORTH AMERICA, INC.

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 SOUTHERN DIVISION

SACV07-452 JVS(MLGx)

14 MAURICIO GONZALEZ, on behalf of
15 himself and all others similarly
16 situated,,
17

Plaintiff,

v.

18 OFFICEMAX NORTH AMERICA,
19 INC., and DOES 1 through 50,
20 inclusive,,
21

Defendants.

Case No.

NOTICE OF REMOVAL
OF ACTION PURSUANT TO
28 U.S.C. §§ 1332, 1441, 1446, 1453
[CLASS ACTION FAIRNESS ACT]

(Orange County Superior Court
Case No. 07CC01228)

22 PLEASE TAKE NOTICE that Defendant OFFICEMAX NORTH
23 AMERICA, INC. ("OfficeMax"), by and through its undersigned counsel, hereby
24 removes this action to the United States District Court for the Central District of
25 California (Southern Division) pursuant to 28 U.S.C. §§ 1446 and 1453, invoking
26 this court's jurisdiction under 28 U.S.C. §§ 1332(d), 1441(a), and 1453(b).
27 Removal is proper for the following reasons.

BACKGROUND

28 1. On or about March 16, 2007, plaintiff Mauricio Gonzalez, on behalf of
himself and all others similarly situated ("Plaintiff"), commenced a putative class

57187-0042/LEGAL13183552.3

NOTICE OF REMOVAL

1 action in the Superior Court of the State of California, County of Orange, entitled
 2 *Mauricio Gonzalez v. OfficeMax North America, Inc.*, Case No. 07 CC01228
 3 ("Complaint"). A copy of the Complaint is attached as Exhibit A.

4 2. The Complaint purports to assert eight claims for relief against
 5 OfficeMax stemming from Plaintiff's employment with Defendant and OfficeMax's
 6 alleged failure comply with the requirements set forth in California Labor Code §§
 7 204, 226, 226.7, 510, 512, 558, 1194, 2698 *et seq.*; Industrial Wage Commission
 8 Order No. 13-2001; and California Business and Professions Code § 17200 *et seq.*

9 **TIMELINESS OF REMOVAL**

10 3. Plaintiff has not yet served OfficeMax with the Summons and
 11 Complaint in this matter.

12 4. Nonetheless, on April 24, 2007, OfficeMax filed its Answer in state
 13 court. This Answer is attached as Exhibit B.

14 5. Removal is timely because OfficeMax has not been served with the
 15 Summons and Complaint, but has made a general appearance and filed its Answer
 16 on April 24, 2007. 28 U.S.C. § 1446(b); Cal. Code of Civil Procedure, § 410.50(a);
 17 *Delgado v. Shell Oil Co.*, 231 F.3d 165, 177 (5th Cir. 2000); *City of Ann Arbor*
 18 *Employees Retirement Sys. v. Gecht*, 2007 WL 760568 *9 (N.D. Cal.).

19 **DIVERSITY JURISDICTION UNDER THE** 20 **CLASS ACTION FAIRNESS ACT, 28 U.S.C. § 1332(d)**

21 6. Pursuant to 28 U.S.C. § 1332(d)(2), the Class Action Fairness Act
 22 ("CAFA"), "the district courts shall have original jurisdiction of any civil action in
 23 which the matter in controversy exceeds the sum or value of \$ 5,000,000.00,
 24 exclusive of interest and costs, and is a class action in which—(A) any member of a
 25 class of plaintiffs is a citizen of a State different from any defendant . . ." As set
 26 forth in greater detail below, Defendant removes this case pursuant to this
 27 provision.
 28

Diversity of Citizenship

7. Plaintiff Mauricio Gonzalez and/or at least one other member of the proposed plaintiff class is a citizen of California. *See* Complaint at ¶¶ 5, 8.

8. OfficeMax, at the time Plaintiff commenced this action, was (and still is) a corporation incorporated under the laws of Ohio, with its principal place of business located in Illinois and, was thus, and is a citizen of Ohio and Illinois. *See* 28 U.S.C. § 1332(c).

9. Pursuant to 28 U.S.C. § 1441(a), the residence of fictitious and unknown defendants should be disregarded for purposes of establishing removal jurisdiction under 28 U.S.C. § 1332. *Fristos v. Reynolds Metals Co.*, 615 F.2d 1209, 1213 (9th Cir. 1980) (unnamed defendants are not required to join in a removal petition). Thus, the existence of Doe defendants one through fifty, inclusive, is irrelevant.

10. Because at least one defendant is incorporated and has its principal place of business outside California, and one or more members of the proposed plaintiff class is a citizen of California, the minimal diversity requirement of 28 U.S.C. § 1332(d)(2)(A) is satisfied.

11. There is no basis for the Court to refuse to exercise jurisdiction under 28 U.S.C. § 1332(d)(3) or (d)(4). Along with the satisfaction of other applicable requirements, the fact that no defendant is incorporated or has its principal place of business within California is sufficient to confer jurisdiction. 28 U.S.C. § 1332(d)(4)(A)(i)(II)(cc) and § 1332(d)(4)(B).

Amount in Controversy

12. On the face of Plaintiff's Complaint, the amount in controversy exceeds the sum or value of \$5,000,000, as required by 28 U.S.C. § 1332(d)(2) and 1332(d)(6). *See* Complaint at ¶¶ 10, 22, 37 and 42. By this allegation and the statements contained in this Notice of Removal, Defendant **does not concede** that Plaintiff and/or the putative class is entitled to any damages, including amounts in

1 excess of \$ 5,000,000. Nevertheless, the aggregated claims of individual class
2 members establishes an amount "in controversy" in excess of \$ 5,000,000 exclusive
3 of interests and costs. Plaintiff expressly alleges that he and the putative class
4 "have suffered and continue to suffer from loss of earnings in amounts as yet
5 unascertained, but subject to proof at trial . . . in an aggregate amount in excess of
6 \$10,000,000.00." Complaint at ¶ 10. The federal amount-in-controversy
7 requirement is "presumptively satisfied" when the complaint alleges damages in
8 excess of \$ 5,000,000. *Lowdermilk v. U.S. Bank Nat'l Assoc.*, 479 F.3d 994, 998
9 (9th Cir. 2007). Therefore, the required amount-in-controversy is presumptively
10 satisfied here.

11 **Size of the Proposed Class**

12 13. Plaintiff alleges that OfficeMax "fails to provide its employees with
13 mandated rest periods or compensate its employees for missed rest periods in the
14 County of Orange, where it operates and employs no less than 100 employees."
15 Complaint at ¶ 5. As alleged by Plaintiff, the proposed class therefore includes 100
16 or more individuals. Accordingly, 28 U.S.C. § 1332(d)(5)(B), which provides that
17 the district courts shall not have jurisdiction over class actions in which "the
18 number of members of all proposed plaintiff classes in the aggregate is less than
19 100," does not preclude jurisdiction over this action.

20 14. Accordingly, all of the requirements for federal jurisdiction under 28
21 U.S.C. § 1332(d)(2) are satisfied, and removal of this action is proper under 28
22 U.S.C. §§ 1441, 1446, and 1453.

23 **VENUE**

24 15. Pursuant to 28 U.S.C. § 1441(a), 1446(a), and 1453(b), any action over
25 which the district court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)
26 may be removed to the Federal District Court for the district and division within
27 which such action is pending. The action being removed was filed and is pending
28 in the California Superior Court of the County of Orange. Accordingly, this Notice

1 of Removal is properly filed in the United States District Court for the Central
2 District of California, Southern Division.

3 **NOTICE OF REMOVAL**

4 16. Pursuant to 28 U.S.C. § 1446(d), OfficeMax will promptly serve on
5 Plaintiff and file with the Superior Court a "Notice to Adverse Party of Removal to
6 Federal Court." Pursuant to Federal Rule of Civil Procedure 5(d), OfficeMax will
7 also file with this Court a "Certificate of Service of Notice to Adverse Party of
8 Removal to Federal Court."

9
10 WHEREFORE, OfficeMax respectfully requests that the above referenced
11 State court action be removed to this Court, that this Court take such steps as are
12 necessary to achieve the removal of this matter from the Orange County Superior
13 Court, and that this Court make such other orders as may be appropriate to effect
14 the preparation and filing of a true record in this cause of all proceedings that may
15 have been had in the state court action.

16
17 DATED: April 24, 2007

PERKINS COIE LLP

18 By: 
19 William P. Kannon

20 Attorneys for Defendant
21 OFFICEMAX NORTH AMERICA,
22 INC.
23
24
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26
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28

EXHIBIT "A" TO NOTICE OF REMOVAL

JH

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MAR 16 2007

ALAN SLATER, Clerk of the Court
J. Haines
BY J. HAINES

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Attorneys for Plaintiff Mauricio Gonzalez and other
similarly situated current and former employees of
OfficeMax North America, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

MAURICIO GONZALEZ, on behalf of
himself and all others similarly situated,

Plaintiffs,

vs.

OFFICEMAX NORTH AMERICA, INC.,
and DOES 1 through 50, inclusive,

Defendants.

CASE NO.

07CC01228

**CLASS ACTION COMPLAINT FOR
DAMAGES FOR:**

1. Failure to Provide Off-Duty Meal Periods and Required Compensation - Labor Code §§ 226.7 and 512 and Industrial Wage Commission Wage Order 13-2001;
2. Failure to Provide Rest Breaks and Required Compensation - Labor Code § 226.7 and Industrial Wage Commission Wage Order 13-2001;
3. Failure to Pay Wages Due - Labor Code § 204;
4. Failure to Indemnify Employees for All Necessary Expenditures or Losses Incurred;
5. Failure to Maintain Required Records - Labor Code § 226;
6. Civil Penalties - Labor Code § 558;
7. Civil Penalties - Labor Code § 2698 et seq.;
8. Violation of California Business and Professions Code § 17200

DEMAND FOR JURY TRIAL

CLASS ACTION QUESTIONNAIRE ISSUED

**JUDGE RONALD L. BAUER
DEPT. CX103**

CLASS ACTION COMPLAINT FOR DAMAGES

UF UNLIMITED CIVL FILING: 0 320.00
JMH 79001 03/16/2007 13:20 PAID CHK/CHK

C1 COMPLEX CASE FEE - PLAI 550.00
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GONZALEZ
OFFICEMAX NORTH AM

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GENERAL ALLEGATIONS

1. PLAINTIFFS are authorized to bring this action pursuant to California Labor Code sections 95(a), 96.7, 98.3, 1194, 1194.5 and 2698 et seq. and pursuant to the power vested in Plaintiffs to enforce the provisions of the California Labor Code and the Industrial Welfare Commission. PLAINTIFFS have complied with the requirements of Labor Code § 2699.3 and received a letter from the Labor and Workforce Development Agency indicating the agency will not investigate the alleged violations.

2. This Court is the proper Court, and this action is properly filed in the Superior Court of the State of California, County of Orange, because Defendants' obligations and liability arise in the County of Orange, because Defendants transact business in the County of Orange, and because a significant amount of the work which is the subject of this action was performed by Plaintiffs in the County of Orange.

3. Plaintiff MAURICIO GONZALEZ (hereinafter referred to as "NAMED PLAINTIFF"), and other similarly situated current and former employees (hereinafter collectively referred to as "PLAINTIFFS") of Defendants OFFICE MAX and DOES 1 through 50 (hereinafter collectively referred to as "DEFENDANTS"), brings this Class Action on behalf of himself and other current and former employees of DEFENDANTS in the State of California, who are similarly situated, to recover, among other things, unpaid wages, interest, attorneys fees, penalties, costs, and expenses. NAMED PLAINTIFF reserves the right to name additional class representatives.

4. PLAINTIFFS are current and former non-exempt employees of DEFENDANTS, and were employed by DEFENDANTS to work for a period of time within the four (4) years preceding the filing of this action.

5. Defendant OFFICEMAX NORTH AMERICA, INC. (hereinafter referred to as "OFFICEMAX") is an Ohio corporation doing a majority of its business in California. PLAINTIFFS are further informed and believe, and thereon allege, that OFFICEMAX is authorized to conduct business in the State of California, and does conduct business in the State of California. Specifically, OFFICE MAX conducts business in, and fails to provide its

1 employees with mandated rest periods or compensate its employees for missed rest periods in
2 the County of Orange, where it operates and employs no less than 100 employees.

3 6. At all times mentioned herein, Defendants were subject to the Labor Code of
4 California and to Industrial Wage Commission Order 13-2001.

5 7. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
6 NAMED PLAINTIFFS, who therefore sue said DOE Defendants by fictitious names. NAMED
7 PLAINTIFFS will amend this Complaint to show their true names and capacities when they
8 have been ascertained.

9 8. At all relevant times herein, PLAINTIFFS were employed by OFFICEMAX, in
10 the State of California, under an employment agreement that was partly written, partly oral, and
11 partly implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS, and each
12 of them, acted pursuant to and in furtherance of a policy and practice of not providing
13 PLAINTIFFS with their rest periods and also not paying PLAINTIFFS their full wages, in
14 violation of California Labor Code §§ 204, 226, 226.7, 510, 512, 1194.

15 9. PLAINTIFFS are informed and believe and thereon allege that each and every of
16 the acts and omissions alleged herein were performed by, and/or attributable to, all
17 DEFENDANTS, each acting as agents and/or employees, and/or under the direction and control
18 of each of the other DEFENDANTS, and that said acts and failures to act were within the
19 course and scope of said agency, employment and/or direction and control.

20 10. As a direct and proximate result of the unlawful actions of DEFENDANTS,
21 PLAINTIFFS have suffered and continue to suffer from loss of earnings in amounts as yet un-
22 ascertained, but subject to proof at trial, within the jurisdiction of this Court, in an aggregate
23 amount in excess of \$10,000,000.00.

24 CLASS ACTION DESIGNATION

25 11. This action is appropriately suited for a Class Action because:

26 A. The potential class is a significant number. NAMED PLAINTIFFS are
27 informed and believe and thereon alleges that DEFENDANTS employed at any one time over
28 100 hourly employees in the State of California, with a total class estimated to be significantly

1 over 100 employees. There also are numerous former employees who were subjected to the
 2 same illegal payroll practices and policies. Joinder of all current and former employees
 3 individually would be impractical.

4 B. This action involves common questions of law and fact to the potential
 5 class because the action focuses on DEFENDANTS' denying its employees rest breaks, off-duty
 6 meal periods and failing to pay employees overtime for work over 8 hours of work in a day
 7 which was applied to all hourly employees in violation of the California Labor Code, and the
 8 California Business and Professions Code which prohibits unfair business practices arising from
 9 such violations.

10 C. The claims of NAMED PLAINTIFFS are typical of the class because
 11 DEFENDANTS subjected all of its hourly employees to the identical violations of the California
 12 Labor Code and California Business and Professions Code.

13 D. The NAMED PLAINTIFFS are able to fairly and adequately protect the
 14 interests of all members of the class because it is in their best interests to prosecute the claims
 15 alleged herein to obtain full compensation due to them for all services rendered and hours
 16 worked.

17 FIRST CAUSE OF ACTION

18 (Failure to Provide Off-Duty Meal Periods and Required Compensation - Labor
 19 Code §§ 226.7 and 512 and Industrial Wage Commission Order No. 13-2001)

20 19. PLAINTIFFS hereby reallege, and incorporate by reference as though fully set
 21 forth herein, the allegations contained in paragraphs 1 through 18.

22 20. From October 2002, and before, to the present, DEFENDANTS failed to comply
 23 with California Labor Code sections 226.7 and 512 and section 11 of the Industrial Wage
 24 Commission Order No. 13-2001 by failing to provide required off-duty meal periods to its
 25 employees who worked more than 5 hours in a shift and a second meal period to Defendant's
 26 employees who worked more than 10 hours in a work day. Defendant further violated Industrial
 27 Wage Commission Order No. 13-2001 and Labor Code section 226.7 by failing to pay each of
 28 its employees who was not provided with an off-duty meal period as required, an additional one

1 hour of compensation at each employee's regular rate of pay for each day that DEFENDANTS
 2 failed to provide the employee with the required off-duty meal period. This compensation, in an
 3 amount of not less than \$10,000,000.00 is owed and unpaid.

4 SECOND CAUSE OF ACTION

5 (Failure to Provide Rest Breaks and Required Compensation - Labor Code
 6 § 226.7 and Industrial Wage Commission Wage Order 13-2001)

7 21. PLAINTIFFS hereby reallege, and incorporate by reference as though fully set
 8 forth herein, the allegations contained in paragraphs 1 through 20.

9 22. From October 2002 to the present, DEFENDANTS failed to comply with section
 10 12 of Industrial Wage Commission Order No. 13-2001 and Labor Code section 226.7 by failing
 11 to authorize and permit its employees to take required rest periods. Defendant further violated
 12 Industrial Wage Commission Order No. 13-2001 and Labor Code section 226.7, by failing to
 13 pay each of its employees who was not provided with a rest period as required under these
 14 orders, an additional one hour of compensation at each employee's regular rate of pay for each
 15 day that defendant failed to provide the employee with the required rest period. This
 16 compensation, in an amount of not less than \$10,000,000.00 is owed and unpaid.

17 THIRD CAUSE OF ACTION

18 (Failure to Pay Wages Due - Labor Code § 204)

19 23. PLAINTIFFS incorporate herein by specific reference as though fully set forth
 20 the allegations in paragraphs 1 through 22.

21 24. Pursuant to California Labor Code section 204, DEFENDANTS were required to
 22 pay PLAINTIFFS all wages earned on days designated in advance by the DEFENDANTS at
 23 least twice during each calendar month.

24 25. PLAINTIFFS were non-salaried employees entitled to the protections of
 25 California Labor Code § 204. During the course of PLAINTIFFS' employment,
 26 DEFENDANTS failed and fail to compensate PLAINTIFFS for all wages earned as required
 27 under the foregoing provisions of the California Labor Code, by not paying its employees
 28 overtime compensation for time worked after 8 hours in a work day or 40 hours in a work week,

1 not paying its employees the extra hour of wage for denying it employees rest breaks, and not
2 paying its employees the extra hour of compensation for each off-duty meal period denied. In
3 violation of state law, DEFENDANTS failed to pay the individual NAMED PLAINTIFFS
4 compensation for work and labor they performed for the DEFENDANTS as employees of
5 DEFENDANTS. As a result of Defendants' failure to provide an accurate and complete
6 itemized statement, Defendants are subject to a civil penalty pursuant California Labor Code
7 § 210.

8 26. DEFENDANTS failed to pay numerous other persons who are similarly situated
9 to the individual NAMED PLAINTIFFS compensation for work and labor such others similarly
10 situated performed for the DEFENDANTS as employees of the DEFENDANTS.

11 27. In violation of state law, DEFENDANTS have knowingly and willfully refused to
12 perform their obligations to compensate PLAINTIFFS for all wages earned and all hours
13 worked. As a direct result, PLAINTIFFS have suffered, and continue to suffer, substantial
14 losses related to the use and enjoyment of such wages, lost interest on such wages, and expenses
15 and attorneys' fees in seeking to compel DEFENDANTS to fully perform their obligations
16 under state law, all to their respective damages in amounts according to proof at time of trial,
17 and within the jurisdiction of this Court. DEFENDANTS committed the acts alleged herein
18 knowingly and willfully, with the wrongful and deliberate intention of injuring PLAINTIFFS,
19 from improper motives amounting to malice, and in conscious disregard of PLAINTIFFS'
20 rights. PLAINTIFFS are thus entitled to recover nominal, actual, compensatory, punitive, and
21 exemplary damages in amounts according to proof at time of trial, and within the jurisdiction of
22 this Court.

23 28. DEFENDANTS' conduct described herein violates Labor Code §§ 204.
24 Therefore, PLAINTIFFS are entitled to recover the unpaid balance of wages DEFENDANTS
25 owe PLAINTIFFS, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

26 ///

27 ///

28 ///

1 **FOURTH CAUSE OF ACTION**

2 **(Failure to Indemnify Employee for All Necessary Expenditures or Losses Incurred)**

3 29. Plaintiffs incorporate herein by specific reference as though fully set forth the
4 allegations in paragraphs 1 through 28.

5 30. Defendants failed to reimburse its employees for necessary expenses incurred in
6 buying uniforms. Further, Labor Code § 2802 states that:

7 (a) An employer shall indemnify his or her employee for all necessary expenditures
8 or losses incurred by the employee in direct consequence of the discharge of his or
9 her duties, or his or her obedience to the directions of the employer, even though
unlawful, unless the employee, at the time of obeying the directions, believed them
to be unlawful.

10 Subsection (c) of Labor Code § 2802 further states that "[f]or purposes to this section, the term
11 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to,
12 attorney's fees incurred by the employee enforcing the rights granted by this section."

13 31. In this case, Plaintiffs and the class were required to incur costs for uniforms and
14 maintenance required by Defendants. As such, Plaintiffs, individually and on behalf of the
15 Class, may bring this action for reimbursement for the uniforms, including interest, costs of suit
16 and attorney's fees pursuant to § 2802(c).

17 32. WHEREFORE, Plaintiffs and the Class are entitled to reimbursement for
18 necessary expenditures and losses incurred by Plaintiffs and the Class Members in direct
19 consequence of the discharge of their duties, or of their obedience to the directions of
20 Defendant, and as a result, incurred interest thereon, costs of suit and attorney's fees pursuant to
21 § 2802(c).

22 **FIFTH CAUSE OF ACTION**

23 **(Failure to Maintain Required Records - Labor Code § 226)**

24 33. PLAINTIFFS hereby reallege, and incorporate by reference as though fully set
25 forth herein, the allegations contained in paragraphs 1 through 28.

26 34. For the four (4) years preceding the filing of this action, Defendants failed to
27 comply with California Labor Code § 226, by failing to furnish PLAINTIFFS with an itemized
28 statement that accurately reflected the gross wages earned and the net wages earned. As a result

1 of Defendants' failure to provide an accurate and complete itemized statement, Defendants are
 2 subject to a civil penalty pursuant California Labor Code § 226.3.

3 35. In violation of state law, DEFENDANTS have knowingly and willfully refused to
 4 perform their obligations to provide required off-duty meal periods, to provide compensation
 5 when meal periods are not provided, to compensate PLAINTIFFS for all wages earned and all
 6 hours worked, and to keep accurate time records of meal periods. As a direct result,
 7 PLAINTIFFS have suffered, and continue to suffer, substantial losses related to the use and
 8 enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees in
 9 seeking to compel DEFENDANTS to fully perform their obligations under state law, all to their
 10 respective damages in amounts according to proof at time of trial, and within the jurisdiction of
 11 this Court. DEFENDANTS committed the acts alleged herein knowingly and willfully, with the
 12 wrongful and deliberate intention of injuring PLAINTIFFS, from improper motives amounting
 13 to malice, and in conscious disregard of PLAINTIFFS' rights. PLAINTIFFS are thus entitled to
 14 recover the unpaid balance of compensation due, wages owed, interest, penalties, nominal,
 15 actual, compensatory, punitive, and exemplary damages, attorneys fees, and costs of suit in
 16 amounts according to proof at time of trial, and within the jurisdiction of this Court.

17 FIFTH CAUSE OF ACTION

18 (Civil Penalties - Labor Code § 558)

19 36. PLAINTIFFS incorporate herein by specific reference as though fully set forth
 20 the allegations in paragraphs 1 through 35.

21 37. By failing to pay its employees the amounts owed for denied rest periods and
 22 denied off-duty meal periods on the regular payday for the pay period in which these amounts
 23 first became due and payable, as required by Labor Code section 204, 510, 512, and Industrial
 24 Wage Commission Wage Order 13-2001, Defendant is liable for penalties pursuant to Labor
 25 Code § 558, in an amount not less than \$10,000,000.00.

26 38. In violation of state law, DEFENDANTS failed to pay the individual NAMED
 27 PLAINTIFFS compensation for work and labor they performed for the DEFENDANTS as
 28 employees of the DEFENDANTS, by instructing its managers to manipulate the time keeping

1 system of its employees, deleting the actual clocked hours to reduce the number of hours
 2 recorded, and depriving its employees their wages for the actual hours worked.

3 39. DEFENDANTS failed to pay numerous other persons who are similarly situated
 4 to the individual NAMED PLAINTIFFS compensation for the work and labor such others
 5 similarly situated performed for the DEFENDANTS as employees of the DEFENDANTS.

6 40. In violation of state law, DEFENDANTS have knowingly and willfully refused to
 7 perform their obligations to compensate PLAINTIFFS for all wages earned and all hours
 8 worked. As a direct result, PLAINTIFFS have suffered, and continue to suffer, substantial
 9 losses related to the use and enjoyment of such wages, lost interest on such wages, and expenses
 10 and attorneys' fees in seeking to compel DEFENDANTS to fully perform their obligations
 11 under state law, all to their respective damages in amounts according to proof at time of trial,
 12 and within the jurisdiction of this Court. DEFENDANTS committed the acts alleged herein
 13 knowingly and willfully, with the wrongful and deliberate intention of injuring PLAINTIFFS,
 14 from improper motives amounting to malice, and in conscious disregard of PLAINTIFFS'
 15 rights. PLAINTIFFS are thus entitled to recover the unpaid balance of wages earned, interest,
 16 nominal, actual, compensatory, liquidated, punitive, and exemplary damages, attorneys fees,
 17 and costs of suit in amounts according to proof at time of trial, and within the jurisdiction of this
 18 Court.

19 SIXTH CAUSE OF ACTION

20 (Civil Penalties - Labor Code §§ 2698 et seq.)

21 41. PLAINTIFFS incorporate herein by specific reference as though fully set forth
 22 the allegations in paragraphs 1 through 40.

23 42. By failing to pay its employees the amounts owed by failing to provide off-duty
 24 meal periods, rest periods, and to pay earned overtime on the regular payday for the pay period
 25 in which these amounts first became due and payable and provide an accurate itemized statement
 26 that included gross wages earned and net wages earned, as required by Labor Code sections
 27 204, 226, 226.7, 510 and 1194, and Industrial Wage Commission Wage Order 13-2001,
 28 ///

1 Defendant is liable for penalties pursuant to Labor Code section 210, 226.3 and 2699(f), in an
2 amount not less than \$10,000,000.00.

3 43. PLAINTIFFS were non-exempt employees entitled to the protections of
4 California Labor Code §§ 1194. During the course of PLAINTIFFS' employment,
5 DEFENDANTS failed to pay PLAINTIFFS compensation for work and labor they performed
6 for the DEFENDANTS as employees of the DEFENDANTS as required under the foregoing
7 provisions of the California Labor Code.

8 44. In violation of state law, DEFENDANTS failed to pay the individual NAMED
9 PLAINTIFFS compensation for work and labor they performed for the DEFENDANTS as
10 employees of the DEFENDANTS, by instructing its managers to manipulate the time keeping
11 system of its employees, deleting the actual clocked hours to reduce the number of hours
12 recorded, and depriving its employees their wages for the actual hours worked.

13 45. DEFENDANTS failed to pay numerous other persons who are similarly situated
14 to the individual NAMED PLAINTIFFS compensation for the work and labor such others
15 similarly situated performed for the DEFENDANTS as employees of the DEFENDANTS.

16 46. In violation of state law, DEFENDANTS have knowingly and willfully refused to
17 perform their obligations to compensate PLAINTIFFS for all wages earned and all hours
18 worked. As a direct result, PLAINTIFFS have suffered, and continue to suffer, substantial
19 losses related to the use and enjoyment of such wages, lost interest on such wages, and expenses
20 and attorneys' fees in seeking to compel DEFENDANTS to fully perform their obligations
21 under state law, all to their respective damages in amounts according to proof at time of trial,
22 and within the jurisdiction of this Court. DEFENDANTS committed the acts alleged herein
23 knowingly and willfully, with the wrongful and deliberate intention of injuring PLAINTIFFS,
24 from improper motives amounting to malice, and in conscious disregard of PLAINTIFFS'
25 rights. PLAINTIFFS are thus entitled to recover the unpaid balance of wages earned, interest,
26 nominal, actual, compensatory, liquidated, punitive, and exemplary damages, attorneys fees,
27 and costs of suit in amounts according to proof at time of trial, and within the jurisdiction of this
28 Court.

SEVENTH CAUSE OF ACTION

(Violation of California Business and Professions Code § 17200)

47. PLAINTIFFS hereby reallege, and incorporate by reference as though fully set forth herein, the allegations contained in paragraphs 1 through 46.

48. By violating the foregoing statutes, DEFENDANTS' acts constitute unfair and unlawful business practices under California Business and Professions Code § 17200, *et seq.*

49. DEFENDANTS' violation of California wage and hour laws constitutes a business practice because it was done repeatedly over a significant period of time, and in a systematic manner to the detriment of PLAINTIFFS.

50. For the four (4) years preceding the filing of this action, PLAINTIFFS have suffered damages and request damages and/or restitution of all monies and profits to be disgorged from DEFENDANTS in an amount according to proof at time of trial, but within the jurisdiction of this Court.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS pray for judgment as follows:

1. For nominal damages;
2. For compensatory damages;
3. For restitution of all monies due to PLAINTIFFS, and disgorged profits from the unlawful business practices of DEFENDANTS;
4. For unpaid wages according to proof;
5. For rest period compensation pursuant to Labor Code § 226.7 and Wage Order 10-2001;
6. For meal period compensation pursuant to Labor Code § 226.7 and Wage Order 10-2001;
7. For preliminary and permanent injunction enjoining the DEFENDANTS from violating the relevant provisions of the Labor Code and the Industrial Welfare Commission Orders;

///

1 8. For civil penalties pursuant to Cal. Lab. Code §§ 210, 226.3, 558 and 2699,
2 according to proof;

3 9. For interest on the unpaid wages at 10% annum pursuant to Labor Code § 218.6,
4 California Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-
5 judgment interest;

6 10. For reasonable attorneys' fees and costs pursuant to Labor Code §§ 218.5, 2699,
7 the Private Attorneys General Act, Code of Civil Procedure § 1021.5 and/or any other
8 applicable provisions providing for attorneys' fees and costs;

9 11. For exemplary or punitive damages in an amount appropriate according to law as
10 may be shown or proven at trial;

11 12. That the First, Second, Third, Fourth, Fifth, Sixth and Seventh Causes of Action
12 be certified as a Class Action.

13 13. That Plaintiff be certified as the Representative of the Class.

14 14. That Counsel for Plaintiff be confirmed as Class Counsel

15 15. For such other and further relief that the Court may deem just and proper.

16 Dated: March 5, 2007

Respectfully Submitted,

RASTEGAR & MATERN

17
18
19 By: 

20 Matthew J. Matern,
21 Attorneys for PLAINTIFFS
22
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28

DEMAND FOR JURY TRIAL

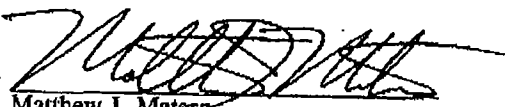
PLAINTIFFS hereby demands a jury trial with respect to all issues triable of right by jury.

Dated: March 5, 2007

Respectfully Submitted,

RASTEGAR & MATERN

By:


Matthew J. Matern
Attorneys for PLAINTIFFS

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): MATTHEW J. MATERN MATTHEW J. MATERN (STATE BAR #159798) RASTEGAR & MATERN, ATTORNEYS AT LAW, APC 1010 CRENSHAW BLVD., SUITE 100 TORRANCE, CALIFORNIA 90501-2056 TELEPHONE NO.: (310) 218-5500 FAX NO.: ATTORNEY FOR (Name): MAURICIO GONZALEZ		CM-010 FOR COURT USE ONLY <div style="font-size: 2em; font-weight: bold; margin: 10px 0;">07CC01228</div> <div style="font-weight: bold; margin: 5px 0;">JUDGE RONALD L. BAUER</div> <div style="font-weight: bold; margin: 5px 0;">DEPT. GX103</div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 700 CIVIC CENTER DRIVE MAILING ADDRESS: 700 CIVIC CENTER DRIVE CITY AND ZIP CODE: SANTA ANA, CALIFORNIA 92701 BRANCH NAME: CENTRAL DISTRICT		
CASE NAME: GONZALEZ VS. OFFICEMAX NORTH AMERICA, INC.		
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) </div> <div style="width: 45%;"> Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 1811). </div> </div>		

Items 1-5 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/DP/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/DP/WD (23) Non-P/DP/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/DP/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (08) <input type="checkbox"/> Collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 1800-1812) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 1800 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|---|--|
3. Type of remedies sought (check all that apply):
 a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): **EIGHT (8)**
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form JD-045)

Date: March 15, 2007

MATTHEW J. MATERN

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 201.8.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 1800 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

Form Adopted for Mandatory Use
Judicial Council of California
CU-010 (Rev. January 1, 2006)**CIVIL CASE COVER SHEET**Legal
Solutions
PlusCal. Rules of Court, rules 201.8, 1800-1812;
Standards of Judicial Administration, § 19

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers

If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 5 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. You do not need to submit a cover sheet with amended papers. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 201.8(c) and 227 of the California Rules of Court.

To Parties in Complex Cases

In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 1800 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)-Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (If the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

Other P/IPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (not asbestos or toxic/environmental) (24)
Medical Malpractice (45)
Medical Malpractice-Physicians & Surgeons
Other Professional Health Care Malpractice
Other P/IPD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other P/IPD/WD

Non-P/IPD/WD (Other) Tort
Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (not medical or legal)
Other Non-P/IPD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (not unlawful detainer or wrongful eviction)
Contract/Warranty Breach-Seller Plaintiff (not fraud or negligence)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case-Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (not provisionally complex) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (If the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential.)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ-Administrative Mandamus
Writ-Mandamus on Limited Court Case Matter
Writ-Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal-Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rule 1800-1812)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (non-domestic relations)
Sister State Judgment
Administrative Agency Award (not unpaid taxes)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (not specified above) (42)
Declaratory Relief Only
Injunctive Relief Only (non-harassment)
Mechanics Lien
Other Commercial Complaint Case (non-tort/non-complex)
Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (not specified above) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief from Late Claim
Other Civil Petition

CIVIL CASE COVER SHEET

EXHIBIT "B" TO NOTICE OF REMOVAL

**ELECTRONICALLY
FILED**

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CIVIL COMPLEX CENTER

Apr 24 2007

ALAN SLATER, Clerk of the Court
by M. Dominguez

1 WILLIAM P. KANNOV (SBN 71409)
2 wkannow@perkinscoie.com
3 **PERKINS COIE LLP**
4 1620 26th Street
5 Sixth Floor, South Tower
6 Santa Monica, CA 90404-4013
7 Telephone: 310.788.9900
8 Facsimile: 310.788.3399
9 WKannow@perkinscoie.com

10 Attorneys for Defendant
11 OFFICEMAX NORTH AMERICA, INC.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ORANGE, CIVIL COMPLEX CENTER

14 MAURICIO GONZALEZ, on behalf of
15 himself and all other similarly situated,

16 Plaintiffs,

17 v.

18 OFFICEMAX NORTH AMERICA, INC.,
19 and DOES 1 through 30, inclusive,

20 Defendants.

No. 07 CC01228

**ANSWER TO UNVERIFIED
COMPLAINT**

CLASS ACTION

Hon. Ronald L. Bauer
Civil Complex Center
Dept. CX-103

Complaint Filed: March 16, 2007

21 Defendant, OfficeMax North America, Inc., an Ohio corporation ("OfficeMax" or
22 "Defendant"), for itself alone and for no other, answers the unverified Complaint of
23 Plaintiff, as follows:

24 1. Pursuant to Section 431.30(d) of the California Code of Civil Procedure,
25 OfficeMax denies, both generally and specifically, each and every allegation contained in
26 the unverified Complaint, and the whole thereof, and further denies that Plaintiff, or any
27 member of the alleged putative class, was damaged in the manner or sum alleged, or in
28 any other manner or sums whatsoever or at all.

ANSWER TO UNVERIFIED COMPLAINT

57187-0001/LEGAL13158635.2

AFFIRMATIVE DEFENSES

AS AND FOR ITS AFFIRMATIVE DEFENSES TO THE INDIVIDUAL AND
PUTATIVE CLASS CLAIMS CONTAINED IN THE COMPLAINT, DEFENDANT ALLEGES
AS FOLLOWS:

FIRST AFFIRMATIVE DEFENSE

(Failure To State A Claim)

2. The Complaint, and each purported cause of action thereof, fails to state facts
sufficient to constitute a cause of action against the Defendant.

SECOND AFFIRMATIVE DEFENSE

(Statute Of Limitations)

3. Defendant is informed and believes that Plaintiff's claims, and each of them, are
barred by applicable statutes of limitations contained in California Code of Civil Procedure
sections 335.1, 337, 338(a), 339 and 340(a) and/or (b).

THIRD AFFIRMATIVE DEFENSE

(Failure To Exhaust Administrative And Contractual Remedies)

4. Defendant is informed and believes that the Complaint, and each purported cause
of action thereof, is barred and/or mitigated because Plaintiff failed to exhaust his administrative,
employment and contractual remedies.

FOURTH AFFIRMATIVE DEFENSE

(Hours Worked)

5. Defendant is informed and believes that the Complaint, and each cause of action
contained therein, is barred because the time that Plaintiff alleges was not compensated did not
constitute "hours worked" within the meaning of the California Labor Code, the California Code
of Regulations, and California Industrial Welfare Commission Wage Orders.

FIFTH AFFIRMATIVE DEFENSE

(Preparatory and Concluding Activities)

6. Defendant is informed and believes that the Complaint is barred because the time that Plaintiff alleges was not properly compensated was spent on preparatory and concluding activities for which no compensation was due.

SIXTH AFFIRMATIVE DEFENSE

(Failure To Observe Company Policies And Directives)

7. To the extent Plaintiff was not properly compensated for hours worked, such time was worked in direct contravention to explicit and repeated directions of Defendant that Plaintiff not work during such time, and notwithstanding explicit company policies and/or practices that employees only work assigned hours, and take all allowable meal and rest periods provided by law.

SEVENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

8. The Complaint, and each purported claim for relief contained therein, is barred by Plaintiff's own unclean hands and other inequitable conduct.

EIGHTH AFFIRMATIVE DEFENSE

(Waiver, Release And Estoppel)

9. Plaintiff's claims, and each of them, are barred by the doctrines of waiver, release and/or estoppel.

NINTH AFFIRMATIVE DEFENSE

(Laches)

10. The Complaint, and each purported claim thereof, is barred by the doctrine of laches.

TENTH AFFIRMATIVE DEFENSE

(After-Acquired Evidence)

11. After the termination of Plaintiff's employment with Defendant, OfficeMax has been informed and has come to believe in evidence of Plaintiff's conduct which, if OfficeMax

1 had been aware of such evidence, or that Plaintiff had engaged in such conduct, and fully
 2 understood and appreciated such evidence or conduct, Defendant could and would have
 3 terminated Plaintiff's employment.

4 **ELEVNETH AFFIRMATIVE DEFENSE**

5 **(Failure To Mitigate)**

6 12. Defendant is informed and believes that Plaintiff failed to exercise due diligence to
 7 mitigate his alleged losses, injuries, or damages and failed to avoid same by timely availing
 8 himself of remedies and procedures specified by the Company; accordingly the amount of
 9 damages to which Plaintiff may be entitled, if any, should be reduced by the amount of damages
 10 that could otherwise have been mitigated.

11 **TWEFTH AFFIRMATIVE DEFENSE**

12 **(True and Privileged Acts of Management)**

13 13. All actions taken by Defendant represent the true and privileged acts of
 14 management taken in good faith for lawful business reasons and were not arbitrary or capricious.

15 **THIRTEENTH AFFIRMATIVE DEFENSE**

16 **(Failure To Notify And Avoid)**

17 14. The Complaint, and each cause of action thereof, is barred – or the damages
 18 flowing therefrom reduced – because Plaintiff failed to notify Defendant of the alleged statutory
 19 violations at the time such violations allegedly occurred, which prevented Defendant from taking
 20 any action to remedy such alleged violations.

21 **FOURTEENTH AFFIRMATIVE DEFENSE**

22 **(Good Faith)**

23 15. Plaintiff's claims are barred because any alleged act or omission of Defendants was
 24 in good faith and Defendant had reasonable grounds to believe that its conduct did not violate any
 25 provision of the California Labor Code, California Code of Regulations, or Order of the Industrial
 26 Welfare Commission. In this connection, Defendant's good faith conduct precludes the award of
 27 any penalties under Local Code § 558.
 28

FIFTEENTH AFFIRMATIVE DEFENSE**(Avoidable Consequences)**

16. The claims of Plaintiff are barred and/or mitigated by the doctrine of avoidable consequences established by *State Dept. of Health Services v. Superior Court (McGinnis)*, 31 Cal. 4th 1026 (2003).

SIXTEENTH AFFIRMATIVE DEFENSE**(Constitutional Due Process)**

17. The purported class claims of plaintiff – if allowed to be tried upon or with so-called representative evidence – would violate the procedural and substantive Due Process clauses of the state and federal Constitutions.

SEVENTEENTH AFFIRMATIVE DEFENSE**(Labor Code 226.7)**

18. The meal and rest break claims of the named plaintiff does not require an employer to ensure that such break periods are, in fact, taken.

EIGHTEENTH AFFIRMATIVE DEFENSE**(Class Treatment Inappropriate)**

19. The claims alleged are inappropriate for class action treatment since none provide a well defined community of interest among alleged class members, and do not involve a predominance of common factual and/or legal issues. Moreover, the named plaintiff herein is an inadequate representative for the proposed class, and class action status is not a superior method for the adjudication of the claims raised herein.

NINETEENTH AFFIRMATIVE DEFENSE**(No Waiting Time Penalties)**

20. At all times herein, Defendants did not intentionally fail to pay wages that it believed, in good faith, were due and owing to any of its former employees. Moreover, the defenses raised herein create a situation where said defenses, if successful, would preclude any recovery by plaintiff.

TWENTIETH AFFIRMATIVE DEFENSE

(No Unfair Competition)

21. Without admitting the allegations of the Complaint, Defendant alleges that Plaintiff's claims are barred in that the alleged practices did not occur (and are not unfair in any event); the public would not likely be deceived by the alleged practices; Defendant would gain no competitive advantage by such alleged practices; and the benefits of the alleged practices outweigh any harm or other impact they may cause.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(No Unlawful Business Practices)

22. Plaintiff's claims are barred, in whole or in part, because Defendant's business practices are and were not "unlawful."

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Actions Legitimate)

23. Defendant's actions were for legitimate business reasons and were not based upon a violation of public policy or other factors protected by law.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(No Penalties Recoverable Under UCL)

24. Plaintiff may not recover damages or penalties (including exemplary damages) pursuant to California Business and Professions Code section 17200, et seq. ("UCL"), as the UCL does not allow recovery of such damages and/or penalties.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Failure to Comply with LCPAGA)

25. Plaintiff may not recover penalties pursuant to the Labor Code Private Attorneys General Act ("LCPAGA") because Plaintiff failed to comply with its conditions precedent, including applicable notice-and-cure provisions.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(LCPAGA Penalties Unjust, Arbitrary and Oppressive, or Confiscatory)

26. To the degree, if any, that penalties are recoverable under the LCPAGA, which Defendant does not concede, they must be reduced by the Court because, under the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary, oppressive, and/or confiscatory.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Unconstitutionality)

27. The Complaint's individual and/or putative class claims that seek the imposition of multiple penalties and/or exemplary damages for the same basic wrongs are unconstitutional in that such relief violates the Due Process clauses of both federal and state Constitutions.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Subsequently Discovered Defenses)

28. OfficeMax reserves the right to assert new and/or additional affirmative defenses based upon further investigation and/or discovery.

WHEREFORE, Defendant prays as follows:

1. That Plaintiff take nothing by his Complaint;
2. That judgment be entered in favor of Defendant;
3. That Defendant recover its costs and expenses incurred herein; and
4. For such other and further relief as the Court deems just and proper.

DATED: April 23, 2007

PERKINS COLE LLP

By: 

William P. Kanno
Attorneys for Defendant
OFFICEMAX NORTH AMERICA, INC.

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PROOF OF SERVICE - MAIL

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am and was at all times herein mentioned employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action or proceeding. My business address is 1620 26th Street, Sixth Floor, Santa Monica, California 90404.

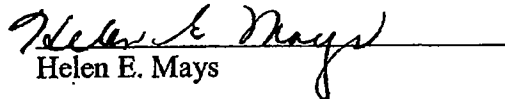
On April 23, 2007, I served a true copy of **ANSWER TO UNVERIFIED COMPLAINT** on the interested parties in this action by placing said document enclosed in a sealed envelope (for collection and mailing, with postage thereon fully prepaid, on the same date, following ordinary business practices) in an internal collection basket, addressed as follows:

Attorney for Plaintiffs:

Matthew J. Matern, Esq.
Rastegar & Matern
1010 Crenshaw Boulevard, Suite 100
Torrance, CA 90501
Tel: 310-218-5500; Fax: 310-218-1155

I am readily familiar with this business's practices concerning collection and processing of correspondence for mailing with the United States Postal Service, and declare that correspondence is deposited with the United States Postal Service on the same day it is internally collected at Perkins Coie LLP in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct; that I am employed in the office of a member of the Bar of this Court at whose direction this service was made; and that this Proof of Service was executed on April 23, 2007, at Santa Monica, California.


Helen E. Mays